RECORD AND BRIEFS

No. 16-349

FEB 17 2017
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SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

RICKY HENSON, IAN MATTHEW GLOVER, KAREN PACOULOUTE, F/K/A KAREN WELCOME KUTEYI, AND PAULETTE HOUSE,

Petitioners,

v.

SANTANDER CONSUMER USA, INC.,

Respondent.

On Writ of Certiorari
to the United States Court of Appeals
for the Fourth Circuit

JOINT APPENDIX

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APPENDIX A

Relevant Court of Appeals Docket Entries

Date Filed	#	Docket Text
02/24/2015	1	Case docketed. Originating case number: 1:12-cv-03519-RDB. Case manager: DLett. [15-1187] (DL)
06/12/2015	19	BRIEF by Appellants Ian Matthew Glover, Ricky Henson, Paulette House and Karen Pacouloute in electronic and paper format. Type of Brief: OPENING. Method of Filing Paper Copies: mail. Date Paper Copies Mailed, Dispatched, or Delivered to Court: 06/12/2015. [999601225] [15-1187] Cory Zajdel
06/12/2015	20	FULL ELECTRONIC APPENDIX and full paper appendix by Appellants Ian Matthew Glover, Ricky Henson, Paulette House and Karen Pacouloute. Method of Filing Paper Copies: mail. Date paper copies mailed dispatched or delivered to court: 06/12/2015. Has district court 90-day restriction expired for all transcripts included in appendix? Not applicable. The electronic appendix is initially

		restricted to case participants only. Case participants must be logged into CM/ECF to view the appendix prior to public release. Appendices in Immigration and Social Security cases will remain restricted.[999601227] [15-1187] Cory Zajdel
06/19/2015	23	AMICUS CURIAE/INTERVENOR BRIEF by Amicus Curiae AARP in electronic and paper format. Type of Brief: Amicus Curiae. Method of Filing Paper Copies: mail. [999606201] [15-1187] Julie Nepveu
06/19/2015	29	AMICUS CURIAE/INTERVENOR BRIEF by Amici Supporting Appellant Attorney General of Maryland, Civil Justice, Inc., Maryland Consumer Rights Coalition, Inc., National Association of Consumer Advocates, National Consumer Law Center and Public Justice Center, Inc. in electronic and paper format. Type of Brief: Amicus Curiae. Method of Filing Paper Copies: courier. Date Paper Copies Mailed, Dispatched, or Delivered to Court: 06/23/2015. [999606872] [15-1187] (DL)
08/17/2015	48	BRIEF by Appellee Santander

		Consumer USA, Incorporated in electronic and paper format. Type of Brief: RESPONSE. Method of Filing Paper Copies: mail. Date Paper Copies Mailed, Dispatched, or Delivered to Court: 08/17/2015. [999641382] [15-1187] Kim Watterson
08/26/2015	50	SUPPLEMENTAL AUTHORITIES (FRAP 28(j)) by Appellee Santander Consumer USA, Incorporated. [999648339]. [15-1187] Kim Watterson
09/03/2015	53	BRIEF by Appellants Ian Matthew Glover, Ricky Henson, Paulette House and Karen Pacouloute in electronic and paper format. Type of Brief: REPLY. Method of Filing Paper Copies: mail. [999654120] [15-1187] Cory Zajdel
10/01/2015	56	SUPPLEMENTAL AUTHORITIES (FRAP 28(j)) by Appellants Ian Matthew Glover, Ricky Henson, Paulette House and Karen Pacouloute. [999670906]. [15-1187] Cory Zajdel
10/27/2015	60	SUPPLEMENTAL AUTHORITIES (FRAP 28(j)) by Appellee Santander Consumer USA, Incorporated. [999687332]. [15-1187] Kim

		Watterson
12/09/15	61	ORAL ARGUMENT heard before the Honorable Paul V. Niemeyer, Allyson K. Duncan and G. Steven Agee. Attorneys arguing case: Mr. Cory Lev Zajdel for Appellants Ricky Henson, Ian Matthew Glover, Karen Pacouloute and Paulette House and Kim M. Watterson for Appellee Santander Consumer USA, Incorporated. Courtroom Deputy: Cathy Eagles. [999715567] [15-1187] (CWE)
03/23/2016	62	PUBLISHED AUTHORED OPINION filed. Originating case number: 1:12-cv-03519-RDB. [999780260]. Annotation added to opinion reflecting Supreme Court history--[Edited 02/02/2017 by SJC]. [15-1187] (DL)
03/23/2016	63	JUDGMENT ORDER filed. Disposition method: 15-1187 opn.p.arg. Decision: Affirmed. Originating case number: 1:12-cv-03519-RDB. Entered on Docket Date: 03/23/2016. [999780264] Copies to all parties and the district court/agency.. [15-1187] (DL)
04/06/2016	64	PETITION for rehearing en banc (FRAP 35) by Appellants

		Ian Matthew Glover, Ricky Henson, Paulette House and Karen Pacouloute. [15-1187] Cory Zajdel
04/19/2016	66	COURT ORDER filed [999798546] denying Motion for rehearing en banc [64] Copies to all parties.. [15-1187] (DL)
01/17/2017	72	SUPREME COURT REMARK--petition for writ of certiorari granted. 01/13/2017 [15-1187] (SJC)

APPENDIX B

Relevant District Court Docket Entries

Date Filed	#	Docket Text
11/29/2012	1	COMPLAINT against Commercial Recovery Systems, Inc., NCB Management Services, Incorporated, Santander Consumer USA, Inc. (Filing fee $ 350 receipt number 0416-3819330.), filed by Paulette House, Ricky Henson, Ian Matthew Glover, Karen Pacouloute. (Attachments: # 1 Civil Cover Sheet, # 2 Summons for Santander Consumer USA, # 3 Summons for NCB Management Services, # 4 Summons for Commercial Recovery Systems)(Zajdel, Cory) (Entered: 11/29/2012)
03/04/2013	8	MOTION to Dismiss Complaint by Santander Consumer USA, Inc. Responses due by 3/21/2013 (Fowler, Stephen) (Entered: 03/04/2013)
03/04/2013	9	Memorandum re 8 MOTION to Dismiss Complaint filed by Santander Consumer USA, Inc.. (Attachments: # 1 Exhibit Exh. A)(Fowler, Stephen) (Entered: 03/04/2013)
03/04/2013	10	MOTION to Dismiss by

		Commercial Recovery Systems, Inc., NCB Management Services, Incorporated Responses due by 3/21/2013 (Fowler, Stephen) (Entered: 03/04/2013)
03/04/2013	11	Memorandum re 10 MOTION to Dismiss filed by Commercial Recovery Systems, Inc., NCB Management Services, Incorporated. (Fowler, Stephen) (Entered: 03/04/2013)
04/04/2013	15	RESPONSE in Opposition re 8 MOTION to Dismiss Complaint filed by Ian Matthew Glover, Ricky Henson, Paulette House, Karen Pacouloute. Replies due by 4/22/2013. (Zajdel, Cory) (Entered: 04/04/2013)
04/04/2013	16	RESPONSE in Opposition re 10 MOTION to Dismiss filed by Ian Matthew Glover, Ricky Henson, Paulette House, Karen Pacouloute. Replies due by 4/22/2013. (Zajdel, Cory) (Entered: 04/04/2013)
04/24/2013	17	REPLY to Response to Motion re 8 MOTION to Dismiss Complaint filed by Santander Consumer USA, Inc.. (Fowler, Stephen) (Entered: 04/24/2013)
04/24/2013	18	REPLY to Response to Motion re 10 MOTION to Dismiss filed by Commercial Recovery

		Systems, Inc., NCB Management Services, Incorporated. (Fowler, Stephen) (Entered: 04/24/2013)
05/09/2013	21	Supplemental to 18 Reply to Response to Motion filed by Commercial Recovery Systems, Inc., NCB Management Services, Incorporated . (Fowler, Stephen) (Entered: 05/09/2013)
12/03/2013	23	SUGGESTION OF BANKRUPTCY Upon the Record and Notice of Automatic Stay by Commercial Recovery Systems, Inc., NCB Management Services, Incorporated, Santander Consumer USA, Inc.. (Attachments: # 1 Exhibit Exh. A, # 2 Exhibit Exh. B)(Fowler, Stephen) (Entered: 12/03/2013)
05/06/2014	24	MEMORANDUM OPINION. Signed by Judge Richard D Bennett on 5/6/14. (apls, Deputy Clerk) (Entered: 05/06/2014)
05/06/2014	25	ORDER granting 8 Santanders Motion to Dismiss; granting in part 10 NCB and CRSs Motion to Dismiss; staying 10 NCB and CRSs Motion to Dismissas to CRS bankruptcy proceedings; and ADMINISTRATIVELY CLOSING this case. Signed by Judge Richard D Bennett on

		5/6/14. (apls, Deputy Clerk) (Entered: 05/06/2014)
05/09/2014	26	MOTION for Reconsideration re 25 Order on Motion to Dismiss,,, 24 Memorandum Opinion by Ricky Henson Responses due by 5/27/2014 (Zajdel, Cory) (Entered: 05/09/2014)
05/09/2014	27	MOTION for Entry of Judgment under Rule 54(b) by Ian Matthew Glover, Ricky Henson, Paulette House, Karen Pacouloute Responses due by 5/27/2014 (Zajdel, Cory) (Entered: 05/09/2014)
05/27/2014	28	RESPONSE in Opposition re 26 MOTION for Reconsideration re 25 Order on Motion to Dismiss,,, 24 Memorandum Opinion filed by NCB Management Services, Incorporated. Replies due by 6/13/2014. (Fowler, Stephen) (Entered: 05/27/2014)
05/27/2014	29	RESPONSE in Opposition re 27 MOTION for Entry of Judgment under Rule 54(b) filed by NCB Management Services, Incorporated, Santander Consumer USA, Inc.. Replies due by 6/13/2014. (Fowler, Stephen) (Entered: 05/27/2014)
06/11/2014	30	REPLY to Response to Motion re 27 MOTION for Entry of Judgment under Rule 54(b) filed

		by Ian Matthew Glover, Ricky Henson, Paulette House, Karen Pacouloute. (Zajdel, Cory) (Entered: 06/11/2014)
06/12/2014	31	REPLY to Response to Motion re 26 MOTION for Reconsideration re 25 Order on Motion to Dismiss,,, 24 Memorandum Opinion filed by Ricky Henson. (Attachments: # 1 Exhibit Thomas v. CitiFinancial Auto Credit, Inc., Case No. 1:10-cv-528-JKB (ECF #64), # 2 Exhibit Bartlett v. Portfolio Recovery Assoc.)(Zajdel, Cory) (Entered: 06/12/2014)
01/13/2015	32	Supplemental to 26 MOTION for Reconsideration re 25 Order on Motion to Dismiss,,, 24 Memorandum Opinion filed by Ricky Henson . (Attachments: # 1 Exhibit Powell v. Palisades Acquisition XVI)(Zajdel, Cory) (Entered: 01/13/2015)
02/02/2015	33	MEMORANDUM OPINION. Signed by Judge Richard D Bennett on 2/2/2015. (ca2s, Deputy Clerk) (Entered: 02/03/2015)
02/02/2015	34	ORDER denying 26 Motion for Reconsideration ; granting 27 Motion for Entry of Judgment under Rule 54(b). Signed by

		Judge Richard D Bennett on 2/2/2015. (ca2s, Deputy Clerk) (Entered: 02/03/2015)
02/20/2015	35	NOTICE OF APPEAL as to 34 Order on Motion for Reconsideration, Order on Motion for Entry of Judgment under Rule 54(b), 25 Order on Motion to Dismiss,by Ian Matthew Glover, Ricky Henson, Paulette House, Karen Pacouloute. Filing fee $ 505, receipt number 0416-5232635. (Zajdel, Cory) Modified on 2/23/2015 (slss, Deputy Clerk). (Entered: 02/20/2015)
03/23/2016	39	JUDGMENT of USCA Affirming the judgment of the district court as to 35 Notice of Appeal, filed by Ian Matthew Glover, Paulette House, Ricky Henson, Karen Pacouloute (nd2s, Deputy Clerk) (Entered: 03/23/2016)
04/06/2016	40	STAY OF MANDATE of USCA UNDER FED. R. APP. P. 41(d)(1) as to 35 Notice of Appeal, filed by Ian Matthew Glover, Paulette House, Ricky Henson, Karen Pacouloute (nd2s, Deputy Clerk) (Entered: 04/07/2016)
04/19/2016	41	ORDER of USCA denying petition for rehearing en banc as

		to 35 Notice of Appeal, filed by Ian Matthew Glover, Paulette House, Ricky Henson, Karen Pacouloute (nd2s, Deputy Clerk) (Entered: 04/19/2016)
04/27/2016	42	MANDATE of USCA as to 35 Notice of Appeal. (bmhs, Deputy Clerk) (Entered: 04/27/2016)
01/17/2017	46	Petition for Writ of Certiorari Granted on 1/13/17(kw2s, Deputy Clerk) (Entered: 02/06/2017)

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

RICKY HENSON
7583 WESTFIELD
ROAD, APT. I
BALTIMORE, MD 21222
(BALTIMORE CITY)

IAN MATTHEW
GLOVER
1001 HAMILTON
AVENUE
CLIFTON FORGE, VA
24422-1609

KAREN PACOULOUTE
F/K/A KAREN
WELCOME KUTEYI
316 WATCHUNG
AVENUE
ORANGE, NJ 07050

PAULETTE HOUSE
3600 ELY PLACE, S.E.
230 WASHINGTON, DC
20019-3037
on her own behalf and on
behalf of

all others similarly situated,

Plaintiffs,

v.

SANTANDER CONSUMER USA INC.
565 FIFTH AVENUE
NEW YORK, NY 10017

NCB MANAGEMENT SERVICES, INC.
3 NESHAMINY INTERPLEX-STE 205
TREVOSE, PA 19053

COMMERCIAL RECOVERY SYSTEMS, INC.
8035 EAST R.L. THORNTON, STE. 220
DALLAS, TX 75228

Serve All On: The Corporation Trust Incorporated
351 West Camden Street
Baltimore, MD 21201

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Case No.

COMPLAINT

Named Plaintiffs Ricky Henson, Ian Matthew Glover, Karen Pacouloute and Paulette House (collectively "Named Plaintiffs"), on their own behalf and on behalf of all others similarly situated, through their attorney Cory L. Zajdel of Z LAW, LLC, hereby submits this Class Action Complaint against Santander Consumer USA Inc. ("Santander"), NCB Management Services, Inc. ("NCB") and Commercial Recovery Systems, Inc. ("Commercial Recovery"), and states:

I. INTRODUCTION

1. This Complaint is filed and these proceedings are instituted under the "Fair Debt Collection Practices Act" 15 U.S.C. § 1692 *et. seq.*, (hereinafter "FDCPA") to recover actual and statutory damages, reasonable attorney's fees and costs of suit due to Defendants' violations all of which occurred within one year from the filing date of this Complaint.

2. The United States Congress has found there is abundant evidence of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress drafted the FDCPA with the goal to eliminate abusive collection practices utilized by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively

disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

3. Defendants are debt collectors actively participating in collecting debts from consumers located in Maryland and around the country.

4. Defendant Santander is an entity that acts as a consumer finance company and acquires defaulted consumer debt that is bought for a few cents on the dollar.

5. Defendant Santander is a debt collector and attempts to collect the purchased defaulted debts directly from consumers.

6. Defendant NCB is a debt collector hired by Santander to attempt to collect defaulted debts from consumers on behalf of Santander.

7. Defendant Commercial Recovery is a debt collector hired by Santander to attempt to collect defaulted debts from consumers on behalf of Santander.

8. Defendants attempt to collect debts from consumers in Maryland and throughout the United States by mail and by telephone.

9. Defendants conduct business in Maryland by attempting to collect on consumer debts by contacting Maryland consumers.

10. Defendant Santander regularly communicates with Class Members unlawfully by: (a) communicating with consumers that are represented by an attorney regarding the alleged debt; (b) misrepresenting the amount of the alleged debt; (c) misrepresenting an entitlement to collect the alleged debt; and (d) referring Class Member accounts to Defendants NCB and Commercial Recovery for collection. Santander is also vicariously liable for the collection activities of Defendants NCB and Commercial Recovery.

11. Defendant NCB regularly communicates with Class Members unlawfully by: (a) communicating with consumers that are represented by an attorney regarding the alleged debt; (b) misrepresenting the amount of the alleged debt; (c) misrepresenting an entitlement to collect the alleged debt; and (d) misrepresenting the identity of the debt owner.

12. Defendant Commercial Recovery regularly communicates with Class Members unlawfully by: (a) communicating with consumers that are represented by an attorney regarding the alleged debt; (b) misrepresenting the amount of the alleged debt; (c) misrepresenting an entitlement to collect the alleged debt; (d) misrepresenting the identity of the debt owner; and (e) misrepresenting its ability to pursue further legal action on the alleged debt.

13. The communications from Defendants to Named Plaintiffs and the Class were generally contradictory, inaccurate and misleading.

14. Named Plaintiffs institute this class action against Defendants on their own behalf and on behalf of all others similarly situated for violations of statutory obligations and seek to recover actual damages, statutory damages, interest, attorney fees, and the costs of this action against Defendants for multiple violations of the FDCPA.

II. PARTIES

15. Named Plaintiff Ricky Henson is a natural person currently residing at 7583 Westfield Road, Apt. I, Baltimore, Maryland 21222 (Baltimore City) and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

16. Named Plaintiff Ian Matthew Glover is a natural person currently residing at 1001 Hamilton Avenue, Clifton Forge, VA 24422-1609 and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

17. Named Plaintiff Karen Pacouloute f/k/a Karen Welcome Kuteyi is a natural person currently residing at 316 Watchung Avenue, Orange, NJ 07050 and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

18. Named Plaintiff Paulette House is a natural person currently residing at 3600 Ely Place, S.E. 230, Washington, DC 20019 and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

19. Defendant Santander Consumer USA Inc. is a corporation formed under the laws of the state of

Illinois with a business address of 565 Fifth Avenue, New York, NY 10017.

20. At all times relevant to this Complaint, Santander transacted business in the District of Maryland and at other locations throughout Maryland, operating as a consumer finance company and "debt collector" as that term is defined by 15 U.S.C. § 1692a(6).

21. Defendant NCB Management Services, Inc. is a corporation formed under the laws of the state of Pennsylvania with a business address of 3 Neshaminy Interplex-Ste. 205, Trevose, PA 19053.

22. At all times relevant to this Complaint, NCB transacted business in the District of Maryland and at other locations throughout Maryland, operating as a collection agency and "debt collector" as that term is defined by 15 U.S.C. § 1692a(6).

23. Defendant Commercial Recovery Systems, Inc. is a corporation formed under the laws of the state of Texas with a business address of 8035 East R.L. Thornton, Ste. 220, Dallas, TX 75228.

24. At all times relevant to this Complaint, Commercial Recovery transacted business in the District of Maryland and at other locations throughout Maryland, operating as a collection agency and "debt collector" as that term is defined by 15 U.S.C. § 1692a(6).

III. JURISDICTION AND VENUE

25. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.

26. Venue is proper in this Court because Defendants transact business within this District, the conduct complained of occurred in the District, the Class Member transactions at issue were previously litigated in this District, the Court maintains jurisdiction over those claims, Named Plaintiff Henson resides in this District and all of the Defendants are residents of different Districts.

IV. FACTUAL ALLEGATIONS

Consumer Credit Contracts with CitiFinancial Auto

27. Named Plaintiffs applied for and were approved for subprime consumer credit from CitiFinancial Auto Credit, Inc., CitiFinancial Auto Corp. or CitiFinancial Auto, LTD ("CitiFinancial Auto").

28. Named Plaintiffs each financed the purchase a motor vehicle in the state of Maryland with the credit extended by CitiFinancial Auto which was a financial obligation and consumer debt that was primarily for personal, family or household purposes and is therefore a "debt" as that term is defined by 15 U.S.C § 1692a(5).

29. As a result of the transaction, each Named Plaintiff became the owner of a motor vehicle and

CitiFinancial Auto acquired a lien and security interest each Named Plaintiff's motor vehicle.

30. Named Plaintiffs' credit transactions were memorialized in Retail Installment Sale Contracts ("RISC").

31. The RISCs affirmatively elect to be governed under Subtitle 10 of Title 12 of the Commercial Law Article (*i.e.* Maryland's Credit Grantor Closed End Credit Provisions – hereafter "CLEC").

32. As some point in time, each Named Plaintiffs were unable to meet their payment obligations and defaulted under the RISC.

33. CitiFinancial Auto and/or its agents seized and repossessed the secured motor vehicles from Named Plaintiffs.

34. Named Plaintiffs did not receive any pre-repossession notices by registered or certified mail at least ten (10) days before the repossession.

35. CitiFinancial Auto wrote to Named Plaintiffs prior to the repossession sale demanding money and telling Named Plaintiffs that the motor vehicles would be sold unless they redeemed their RISCs.

36. CitiFinancial Auto then wrote to Named Plaintiffs and required accelerated and full payment of the outstanding balance on the RISC, stating the time and place the repossessed vehicles would be sold and that the sales would be public sales.

37. CitiFinancial Auto again wrote to Named Plaintiffs notifying them that the motor vehicles were sold, providing Named Plaintiffs with a partial accounting and telling Named Plaintiffs that a deficiency balance exists on their accounts.

Class Action Lawsuit and Settlement With CitiFinancial Auto

38. A class action lawsuit was filed against CitiFinancial Auto alleging that CitiFinancial Auto violated rights provided to consumers with respect to motor vehicle repossession under CLEC.

39. The litigation filed against CitiFinancial Auto proceeded in the United States District Court for the District of Maryland under case caption *Thomas v. CitiFinancial Auto Credit, Inc.*, 1:10-cv-00528-JKB ("Thomas Action").

40. The parties in the Thomas Action entered into a class-wide settlement agreement signed on September 30, 2011.

41. CitiFinancial Auto agreed to "waive any Deficiency Balance for all Settlement Class Members who do not opt out."

42. This Court entered an order preliminarily approving the settlement and appointing class counsel to represent all the Thomas Action class members with respect to the CitiFinancial Auto accounts on November 14, 2011.

43. Named Plaintiffs were all members of the class in the Thomas Action.

44. On May 29, 2012, this Court entered an order after holding a fairness hearing finally approving the class action settlement in the Thomas Action.

45. Thomas Action class members broadly released all claims against CitiFinancial Auto relating to the credit accounts resulting in a repossession sale.

46. Specifically excluded from the broad release in the Thomas Action was "any claims of Settlement Class Members that may be asserted against Santander Consumer USA Inc. or any of its related entities, or any person or entities collecting on their behalf, arising from efforts to collect on Settlement Class Members' accounts on or after December 1, 2011. This clarification shall not in any way limit the scope of the foregoing releases as to CitiFinancial or, except as stated in this paragraph 8(d), any other Released Parties or Released Claims."

Defendant Santander's Efforts to Collect From Named Plaintiffs After the Class was Certified and Class Counsel was Appointed by the District Court

47. Subsequent to Named Plaintiffs and all Thomas Action class members defaulting on each RISC, Defendant Santander was hired by CitiFinancial Auto as a servicer to collect on Named Plaintiffs and all other Thomas Action class member defaulted accounts.

48. On information and belief, no later than December 1, 2011, Defendant Santander purchased the delinquent Thomas Action class member accounts.

49. On information and belief, prior to December 1, 2011, Defendant Santander had knowledge that the Thomas Action class member accounts were the subject of a class action lawsuit and settlement.

50. On information and belief, prior to December 1, 2011, Defendant Santander had knowledge that this Court entered an order preliminarily approving the Thomas Action class-wide settlement and appointing class counsel to represent all Thomas Action class members.

51. On information and belief, Defendant Santander was not provided any contractual authority to collect from Thomas Action class members on or after December 1, 2011.

52. Beginning on or around December 1, 2011, Defendant Santander through its employees began communicating with Named Plaintiffs and other Thomas Action class members in writing through the United States mails and by telephone in an attempt to collect on the alleged debts.

53. For instance, on December 23, 2011 Defendant Santander placed a telephone call to Named Plaintiff House in an effort to collect on House's CitiFinancial Auto alleged debt that was part of the Thomas Action settlement.

54. Defendant Santander confirmed the telephone conversation with Named Plaintiff House with a letter mailed to House on December 27, 2011.

55. In communicating with Named Plaintiff House after December 1, 2011, Defendant Santander misrepresented: (a) the amount of the alleged debt; and (b) that it was entitled to collect on the alleged debt.

56. Defendant Santander also communicated with Named Plaintiff House at a time in which House was represented by an attorney with respect to the CitiFinancial Auto alleged debt.

57. Due to Defendant Santander's misrepresentations and unfair debt collection practices, Named Plaintiff House was induced to make multiple payments to Santander on the alleged debt.

Defendant NCB's Efforts to Collect From Named Plaintiffs Henson and Glover After the Class was Certified and Class Counsel was Appointed by the District Court

58. Subsequent to Named Plaintiffs and all Thomas Action class members defaulting on each RISC, Defendant Santander's purchase of the Thomas Action class member delinquent accounts and appointment of class counsel, Santander hired NCB to collect from Thomas Action class members.

59. Beginning on or around December 1, 2011, Defendant NCB through its employees began

communicating with Thomas Action class members in writing through the United States mails and by telephone in an attempt to collect on the alleged debts.

60. For instance, on December 29, 2011, Defendant NCB mailed a letter to Named Plaintiff Henson in an effort to collect on Henson's CitiFinancial Auto alleged debt that was part of the Thomas Action settlement.

61. The letter mailed to Named Plaintiff Henson stated that NCB was collecting on behalf of CitiFinancial Auto.

62. The letter mailed to Named Plaintiff Henson stated that the balance on the CitiFinancial Auto alleged debt was $26,088.50.

63. In December 2011, Named Plaintiff Glover called Defendant Santander to determine the status of his CitiFinancial Auto credit account.

64. Defendant Santander directed Named Plaintiff Glover to Defendant NCB.

65. Named Plaintiff called Defendant NCB and inquired into the status of the CitiFinancial Auto alleged debt.

66. NCB represented that an amount was due and owing to Defendant Santander and requested that Named Plaintiff Glover begin making payments on the alleged debt.

67. In communicating with Named Plaintiffs Henson and Glover after December 1, 2011, Defendant NCB misrepresented: (a) the amount of the alleged debts; (b) that it was entitled to collect on the alleged debts; and (c) the identity of the debt owner.

68. Defendant NCB also communicated with Named Plaintiffs Henson and Glover at a time in which Henson and Glover were represented by an attorney with respect to the CitiFinancial Auto alleged debt.

69. Due to Defendant NCB's misrepresentations and unfair debt collection practices, Named Plaintiff House was induced to make payments to NCB on the alleged debt.

Defendant Commercial Recovery's Efforts to Collect From Named Plaintiff Pacouloute After the Class was Certified and Class Counsel was Appointed by the District Court

70. Subsequent to Named Plaintiffs and all Thomas Action class members defaulting on each RISC, Defendant Santander's purchase of the Thomas Action class member delinquent accounts and appointment of class counsel, Santander hired Commercial Recovery to collect from Thomas Action class members.

71. Beginning on or around December 1, 2011, Defendant Commercial Recovery through its employees began communicating with Thomas Action class members in writing through the United States

mails and by telephone in an attempt to collect on the alleged debts.

72. For instance, on January 26, 2012, Defendant Commercial Recovery mailed a letter to Named Plaintiff Pacouloute in an effort to collect on Pacouloute's CitiFinancial Auto alleged debt that was part of the Thomas Action settlement.

73. The letter mailed to Named Plaintiff Pacouloute stated that Commercial Recovery was collecting on behalf of CitiFinancial Auto.

74. The letter mailed to Named Plaintiff Pacouloute stated that the balance on the CitiFinancial Auto alleged debt was $28,608.11.

75. In communicating with Named Plaintiff Pacouloute after December 1, 2011, Defendant Commercial Recovery misrepresented: (a) the amount of the alleged debt; (b) that it was entitled to collect on the alleged debt; and (c) the identity of the debt owner.

76. Defendant Commercial Recovery also communicated with Named Plaintiff Pacouloute at a time in which Pacouloute was represented by an attorney with respect to the CitiFinancial Auto alleged debt.

77. While attempting to collect the alleged debts from Named Plaintiffs and all Thomas Action class members after December 1, 2011, Defendants acted in an abusive, harassing and deceptive manner contrary to the standards of civilized society and the

standards employed by others in its industry and in violation of 15 U.S.C. §§ 1692(b); 1962c, 1962c(b),1692d, 1692e, 1692e(2), 1692e(5), 1692e(10), 1692e(11), 1692f and 1692g(a) amongst others.

78. As a direct and proximate result of Defendants' illegal collection tactics and harassing behavior, Named Plaintiffs and the Class they seek to represent have sustained actual damages in the form of payments made to Defendants in reliance upon the misrepresentations.

V. CLASS ACTION ALLEGATIONS

79. Named Plaintiffs bring this action on behalf of a Class which consists of:

> **All Thomas Action class members who were subjected to debt collection efforts by Santander Consumer USA Inc. on or after December 1, 2011.**
>
> *NCB Subclass*
>
> **All Thomas Action class members who were subjected to debt collection efforts by NCB on or after December 1, 2011.**
>
> *Commercial Recovery Subclass*
>
> **All Thomas Action class members who were subjected to debt collection efforts by Commercial Recovery on or after December 1, 2011.**

Excluded from the Class are those individuals who now are or have ever been executives of the Defendants and the spouses, parents, siblings and children of all such individuals.

80. The Class and Subclasses, as defined above, are identifiable.

81. Named Plaintiffs are all members of the Class.

82. Named Plaintiffs Henson and Glover are each members of the NCB Subclass.

83. Named Plaintiff Pacouloute is a member of the Commercial Recovery Subclass.

84. The Class consists, at a minimum of more than one hundred Thomas Action class members who defaulted on a loan with CitiFinancial Auto and was subjected to collection efforts by Santander, NCB and/or Commercial Recovery on or after December 1, 2011 and is thus so numerous that joinder of all members is clearly impracticable. Fed. R. Civ. P. 23(a)(1).

85. There are questions of law and fact which are not only common to the Class but which predominate over any questions affecting only individual class members. Fed. R. Civ. P. 23(a)(2).

86. The common and predominating questions include, but are not limited to:

(a) Whether Defendant Santander had the contractual authority on or after December 1, 2011 to

collect any amounts from Thomas Action class members;

(b) Whether it is a violation of the FDCPA to attempt to collect an alleged debt to which the debt collector has no contractual or legal right to collect;

(c) Whether Defendant Santander had knowledge on or before December 1,

2011 that Thomas Action class members were represented by counsel;

(d) Whether it is a violation of the FDCPA to attempt to collect an alleged debt from a consumer known to be represented by counsel;

(e) Whether Defendants misrepresented the amount of the CitiFinancial Auto alleged debts to the Class;

(f) Whether it is a violation of the FDCPA to misrepresent the amount of the CitiFinancial Auto alleged debts to the Class;

(g) Whether Defendants misrepresented the identity of the debt owner;

(h) Whether it is a violation of the FDCPA to misrepresent the identity of the debt owner;

(i) Whether Defendant NCB acted as an agent of Defendant Santander for the purpose of collecting on the CitiFinancial Auto alleged debts included in the Thomas Action;

(j) Whether Defendant Commercial Recovery acted as an agent of Defendant Santander for the purpose of collecting on the CitiFinancial Auto alleged debts included in the Thomas Action;

(k) Whether Defendant Santander is vicariously liable for the acts of Defendant NCB and Commercial Recovery in attempting to collect on the CitiFinancial Auto alleged debts.

87. Claims of Named Plaintiffs are typical of the claims of the respective members of the Class within the meaning of Fed. R. Civ. P. 23(a)(3), and are based on and arise out of similar facts constituting the wrongful conduct of Defendants.

88. Named Plaintiffs will fairly and adequately protect the interests of the Class within the meaning of Fed. R. Civ. P. 23(a)(4).

89. Named Plaintiffs are committed to vigorously litigating this matter.

90. Further, Named Plaintiffs have secured counsel experienced in handling consumer class actions and complex consumer litigation.

91. Neither Named Plaintiffs nor their counsel have any interests which might cause them not to vigorously pursue this claim.

92. Common questions of law and fact enumerated above predominate over questions affecting only individual members of the Class. Fed. R. Civ. P. 23(b)(3).

93. A class action is the superior method for fair and efficient adjudication of the controversy. Fed. R. Civ. P. 23(b)(3).

94. The likelihood that individual members of the Class will prosecute separate actions is remote due to the time and expense necessary to conduct such litigation.

95. Named Plaintiffs' counsel is experienced in class actions and foresees little difficulty in the management of this case as a class action.

V. CAUSES OF ACTION

COUNT I

(FAIR DEBT COLLECTION PRACTICES ACT)

96. Named Plaintiffs incorporate by reference all of the allegations of this Complaint as though fully stated herein.

97. While attempting to collect the alleged debts from Named Plaintiffs, the Class and the Subclasses, Defendants acted in an abusive, harassing and deceptive manner contrary to the standards of civilized society and the standards employed by others in its industry and in violation of numerous provisions of the FDCPA.

98. FDCPA violations include, but are not limited to: 15 U.S.C. §§ 15 U.S.C. §§ 1692(b); 1962c, 1962c(b),1692d, 1692e, 1692e(2), 1692e(5), 1692e(10), 1692e(11), 1692f and 1692g(a) amongst others.

99. As a direct and proximate result of Defendants' illegal collection tactics and harassing behavior in violation of the FDCPA, Named Plaintiffs, the Class and Subclasses have sustained actual damages in the form of payments made to Defendants in reliance upon the misrepresentations.

WHEREFORE, Named Plaintiffs pray that judgment be entered against Defendants:

- Certifying the Class, the NCB Subclass and Commercial Recovery Subclass under Rule 23(b)(3).
- For an order declaring that the Defendants' actions as described above are in violation of the FDCPA;
- for an award of actual and compensatory damages pursuant to 15 U.S.C. § 1692k against Defendants;
- for an award of statutory damages pursuant to 15 U.S.C. § 1692k against each Defendant not to exceed $500,000 per Defendant;
- for an award of costs of litigation and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k against each Defendant;
- Award pre and post judgment interest; and

- Award such other relief this Court deems just and equitable.

Dated: November 29, 2012

Respectfully submitted,

Z LAW, LLC

/s/ 28191

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JURY TRIAL

Named Plaintiffs Henson, Glover, Pacouloute and House demand trial by jury.

/s/ 28191
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